

IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF MISSISSIPPI
SOUTHERN DIVISION

ACCIDENT INSURANCE COMPANY, INC.

PLAINTIFF

VERSUS

CIVIL ACTION NO. 1:20-cv-191-HSO-JCG

DENNIS COLLIER CONSTRUCTION, LLC;
DENNIS COLLIER, INDIVIDUALLY;
MARK EVANS; and RONETTE EVANS

DEFENDANTS

MOTION TO DISMISS OF MARK AND RONETTE EVANS

Defendants, Mark and Ronette Evans, move to dismiss Plaintiff's Complaint under the doctrine of abstention and state:

I.

Defendants request dismissal of this declaratory judgment action on abstention grounds in deference to the currently pending state court action in Pearl River County Circuit Court, cause number 19-CV-158-PH. Mark and Ronette Evans filed an Amended Complaint in state court against Accident Insurance Company, Inc., seeking a declaratory judgment on insurance coverage, per M.R.C.P. 57 (b)(4). See *National Builders and Contractors Ins. Co. v. Dossett*, 2011 WL 1628029 (S.D. Miss. 2011) (Judge Bramlette invoked abstention in deference to state court action in competing declaratory judgment lawsuits construing insurance coverage).

II.

Under the Declaratory Judgment Act, this Court has a wide measure of discretion in deciding whether to entertain jurisdiction. 28 U.S.C. § 2201; *St. Paul Insurance Company v. Trejo*, 39 F. 3d 585 (5th Cir. 1994). The Fifth Circuit's *Trejo* factors warrant abstention in favor of the currently pending state court action.

III.

Defendants filed a breach of contract lawsuit relating to certain construction defects in the construction and remodel of their historic residential home. The Circuit Court of Pearl River County is intimately familiar with these proceedings, which have been pending since December 2019. Due to this familiarity, the Pearl River County Circuit Court is in a better position to make a determination on insurance coverage, and dismissal in favor of the state court action will promote judicial economy, avoid an undue burden on the parties, and prevent duplicitous litigation. See Amended Complaint in state court, "Exhibit 1."

WHEREFORE, Plaintiff's Complaint should be dismissed with prejudice on abstention grounds in deference to the pending state court action.

s/ Clark Hicks

L. CLARK HICKS, JR., MSB NO. 8963

*Attorney for Defendants,
Mark and Ronette Evans*

L. CLARK HICKS, JR., ESQ.
HICKS LAW FIRM
211 South 29th Avenue, Suite 201 (39401)
Post Office Box 18350
Hattiesburg, MS 39404-8350
Telephone: (601) 544-6770
Facsimile: (601) 544-6775
Email: clark@hicksattorneys.com

CERTIFICATE OF SERVICE

I hereby certify that I have this day filed the above and foregoing with the Court's CM/ECF filing system, which will send notice to the following:

Matt Quinlivan
Deutsch Kerrigan, L.L.P.
2510 14th Street, Suite 1001
Gulfport, MS 39501
matt@deutschkerrigan.com

This the 21st day of July, 2020.

s/ Clark Hicks

L. CLARK HICKS, JR., MSB NO. 8963

Attorney for Defendants,

Mark and Ronette Evans